

January 5, 1996

IN RE SMITH
COMPLAINT 1995 - NO. 4

REASONABLE CAUSE DETERMINATION - ORDER OF DISMISSAL

I. Nature of the Complaint

The complainant alleges that Representative Scott Smith violated RCW 42.52.020, 42.52.040(2), 42.52.140 and 42.52.170 of the State Ethics Act (Act). The charges are based upon the following alleged facts, stated or implied: that a letter drafted by Representative Smith and paid for by his campaign committee was mailed to agents of Farmers Insurance; that the letter identifies Smith as a member of the Insurance Committee, a leader on insurance issues and an agent of the Smith Insurance Agency; that the letter contains the Farmers Insurance logo and requests a campaign contribution from each agent; that in the letter Smith states "I will continue to represent our interest in Olympia, but I need your help to stay there."

The complainant alleges that Representative Smith, in his capacity as a state officer, "is clearly stating to agents of the Farmers Insurance Group of Companies that for a price of a financial contribution to his campaign he will use his powers as a state legislator to work on behalf of the interests of his former colleagues."

II. Procedural History

Complaint 1995 - No. 4 was received on November 28, 1995. The Board considered the matter on November 29, and December 11, 1995. An investigation was conducted pursuant to RCW 42.52.420.

III. Determination of Allegations of Fact

- (1) There is reasonable cause to believe that Representative Smith drafted and signed the letter which is the subject of this complaint.
- (2) There is reasonable cause to believe that Representative Smith has engaged in some legislative activities favored by members of the insurance industry.
- (3) Although the letter in question was an unartful attempt to raise funds for a legislative campaign neither the allegations nor the Board's investigation has revealed sufficient facts to support reasonable cause to believe that Representative Smith acted in violation of the Act by sending the letter.

IV. Determination of Allegations of Ethics Law Violations

This complaint, at first blush, appears similar to **Complaint No.1 - 1995**, and related **Advisory Opinion 1995 - No. 7**. RCW 42.52.070 and 42.52.900 were discussed in those opinions and will

be included in this discussion. The Board will consider a section of the ethics law it feels may be germane to the alleged facts even if that particular section was not referenced in the complaint (see **Complaint No.2 - 1995**).

(1) *RCW 42.52.020* provides that:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's duties.

In our first advisory opinion, **Advisory Opinion 1995 - No. 1**, we adopted the "citizen-legislator" exception in the former Code of Legislative Ethics. Under this exception, a legislator does not have an interest which is in conflict with the proper discharge of legislative duties if no benefit or detriment accrues to the legislator as a member of a business, profession, occupation, or group, to a greater extent than to any other member of such business, profession, occupation or group. Representative Smith is a member of the insurance industry and a practicing insurance agent but there are no facts which suggest he has benefitted to a greater extent than other members of his industry as a result of discharging his legislative duties. We do not have reasonable cause to believe this section has been violated.

(2) *RCW 42.52.040* provides in pertinent part:

(1) Except in the course of official duties or incident to official duties, no state officer or state employee may assist another person, directly or indirectly, whether or not for compensation, in a transaction involving the state:

(a) In which the state officer or state employee has at any time participated;
or

(b) If the transaction involving the state is or has been under the official responsibility of the state officer or state employee within a period of two years preceding such assistance.

(2) No state officer or state employee may share in compensation received by another for assistance that the officer or employee is prohibited from providing under subsection (1) or (3) of this section.

(3) A business entity of which a state officer or state employee is a partner, managing officer, or employee shall not assist another person in a transaction involving the state if the state officer or state employee is prohibited from doing so by subsection (1) of this section.

Since *RCW 42.52.010(19)(b)* exempts from the definition of a "transaction involving the state" the preparation, consideration or enactment of legislation and the performance of legislative duties, *RCW 42.52.040* is not applicable to this complaint and we find no reasonable cause to believe it has been violated.

(3) *RCW 42.52.070* provides:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or

exemptions for himself, or herself, or his or her spouse, child, parents, or other persons.

In **Advisory Opinion 1995 - No.7** we found this section would be violated if a legislator-attorney wrote a letter to some of his lawyer-associates which could be used by the firm to attract clients. The tenor of the letter was such that the firm could portray that a special advantage or privilege would be available to its clients. The Board found that such a letter would be more in the nature of an offer of access, allowing the firm to claim special access to legislators and indirectly enhancing the legislator's position in the firm.

The present case presents different facts. Representative Smith professes to share points of view held by other insurance agents. With the exception of the business and occupation tax, which he credits insurance agents' efforts in reducing, Smith talks about opposition from those ". . . who think I am going the wrong direction politically, and are gearing up to try to replace me next year. People who believe the government should have more control over our lives and businesses, . . ." His promise to ". . . continue to represent our interest in Olympia," appears to be a broad statement of common interest and not an offer of special privileges or access. Other significant distinctions between these facts and those in the advisory opinion are that there is no apparent financial relationship between insurance agent Smith and the other agents and no indication that Representative Smith is offering to other agents the opportunity to attract clients due to any relationship they might have with him. We find no reasonable cause to believe RCW 42.52.070 has been violated.

(4) *RCW 42.52.170* provides:

No person shall give, pay, loan, transfer, or deliver, directly or indirectly, to any other person anything of economic value believing or having reason to believe that there exist circumstances making the receipt thereof a violation of RCW 42.52.040, 42.52.110, 42.52.120, 42.52.140, or 42.52.150.

This statute prohibits a person from giving any thing of economic value to state officers or state employees if the person knew or had reason to believe that receipt of the item would cause the officer or employee to violate certain other sections of the Act. If the Board were to find that any of the sections listed in .170 had been violated by a state officer or state employee, it could request the attorney general (see RCW 42.52.490) to bring a civil action against the other person involved in the transaction, under RCW 42.52.170. If the Board were to determine that none of the listed sections has been violated by the state officer or state employee, there would be no .170 action against another person. Therefore, even though Representative Smith could not have violated .170, his actions will be analyzed with reference to RCW 42.52.040, .110, .120, .140, and .150., in order to determine if the Board should request the attorney general to take action against another person. Also, we deem it appropriate to review these statutes for the reason they may be germane to the allegations levied against Representative Smith even if .170 is not directly applicable to his behavior.

(i) *RCW 42.52.040*

We have previously determined, in (2) above, that this statute is inapplicable.

(ii) *RCW 42.52.110* provides:

No state officer or state employee may, directly or indirectly, ask for or give or receive or agree to receive any compensation, gift, reward or gratuity from a source except the state of Washington for performing or omitting or

deferring the performance of any official duty, unless otherwise authorized by law.

There are no facts which show that Representative Smith has requested anything other than a campaign contribution, nor that he has conditioned the performance or nonperformance of some official duty on how insurance agents might respond to his request. Campaign contributions, properly received and reported, are not the type of improper compensation, gift, reward or gratuity prohibited by the statute since they are "otherwise authorized by law" (Chapter 42.17 RCW).

(iii) RCW 42.52.120 prohibits the receipt of any thing of economic value under any contract or grant outside of official duties, with certain exceptions.

We find there is no reasonable cause to believe this section has been violated as there are no facts that a contract or grant is involved.

(iv) RCW 42.52.140 provides:

No state officer or state employee may receive, accept, take, seek or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction.

This section may be referred to as the "quid pro quo" prohibition and it controls what otherwise might be permitted activity under other sections of the Act. If, for instance, the receipt of a gift would be permissible under RCW 42.52.150 (the gift statute), the gift would still have to withstand scrutiny under .140. This prohibition would also be applicable to campaign contributions if such contributions were solicited or accepted under circumstances where it could reasonably be expected a vote is being influenced or a reward is being accepted (**Senate Ethics Board Complaint 1975 - No. 1**).

In analyzing RCW 42.52.140 the Board is primarily looking for conduct which offers or appears to offer something specific in exchange for something specific. The offer of a particular vote on a specific bill in exchange for money is an obvious example of a violation of the "quid pro quo" prohibition.

In **Senate Ethics Board Complaint 1975 - No.1**, a senator was found to have violated the ethics law by his acceptance of \$10,000 in cash campaign contributions under circumstances where it appeared the money was a reward for his help in securing passage of a particular piece of legislation.

In **Senate Ethics Board Complaint 1991 - No.1**, it was alleged that an ethical violation had occurred because a senator accepted campaign contributions from lobbyists with interests in legislation before the committee the senator chaired. That Board dismissed the complaint in a written opinion which found there was no allegation or evidence that the contributions were related to influencing any particular action, or that any personal gain was involved.

Here, the letter's message is clear - insurance agents should support Representative Smith's re-election efforts because he, like them, opposes "People who believe the government should have more control over our lives and businesses . . ." Neither this, nor the remark about B&O taxes, improperly conditions legislative performance on a campaign contribution. We find there is no reasonable cause to believe Representative Smith has violated this section.

(v) RCW 42.52.150 places limitations and conditions on the receipt of certain gifts.

This section is not applicable to these facts for the reason that by statutory definition, campaign contributions are not gifts (RCW 42.52.010(9)(h)).

(5) *RCW 42.52.900* provides in pertinent part:

Government derives its powers from the people. Ethics in government are the foundation on which the structure of government rests. State officials and employees of government hold a public trust that obligates them, in a special way, to honesty and integrity in fulfilling the responsibilities to which they are elected or appointed. Paramount in that trust is the principle that public office, whether elected or appointed, may not be used for personal gain or private advantage.

This section sets forth the legislative declaration of policy to guide ethics decisions in government. As a declaration of policy it does not prescribe any operative rules and cannot by itself constitute a basis for us to determine that there exists reasonable cause to believe Representative Smith has violated the State Ethics Act (**Complaint 1995 - No. 2**). The Board refers to this section if there has been a violation of a substantive section of the Act involving personal gain or private advantage, or in interpreting close cases alleging a violation of other substantive sections of the Act. (**Advisory Opinion 1995 - No. 7**). In this case the Board has determined that no reasonable cause exists to believe a violation has occurred.

V. Conclusion and Order

Based on a review of the complaint and the Board's investigation, the Board determines there is no reasonable cause to believe that Representative Smith has committed a violation of the State Ethics Act. The complaint is dismissed.

VI. Comment

While some might criticize the letter in question as a somewhat crude approach to fundraising, a criticism shared by this Board, we recognize that elected officials naturally solicit and receive support from people who agree with their views, not oppose them.

Although this complaint is dismissed, the Board feels that a cautionary note is advisable. Legislators must be careful when soliciting funds or their requests may be perceived as conditioning their legislative support on a contribution. A poor choice of words, no matter how innocently written, can give rise to a perception that a member will represent only those interests who give money. In this case, that may have been the perception of the complainant. Legislators represent all the people, not merely campaign contributors. The more narrow the group from whom a legislator solicits support and is perceived to represent, the more that legislator invites heightened scrutiny from this Board, as well as the public.